

Bill No. 17-01
Concerning: Air Quality Control -
Amendments
Revised: Nov. 20, 2001 Draft No. 7
Introduced: May 15, 2001
Enacted: November 20, 2001
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- (1) authorize the Department of Environmental Protection to take action to protect the air quality of County businesses;
- (2) delete references to open burning of residential trash and vegetation wastes during land clearing and certain other obsolete or applicable practices;
- (3) conform limits on visible emissions and open burning requirements to state law;
- (4) facilitate County enforcement actions against air pollution;
- (5) make definitions of certain technical terms more consistent with current air quality control practices;
- (6) allow certain final decisions of the Department of Environmental Protection to be appealed directly to Circuit Court, and repeal the authority of the County Board of Appeals to hear appeals regarding air quality control violations; and
- (7) generally revise County law regarding air quality control.

By amending

Montgomery County Code
Chapter 3, Air Quality Control

Chapter 2, Administration
Section 2-112

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 2-112 and Chapter 3 are amended as follows:

2-112. Duties and powers.

(a) The County Board of Appeals has the following duties and powers:

* * *

[(21) *Appeals concerning air quality control.* The Board hears and decides all appeals taken under Section 3-16.] Reserved.

* * *

Chapter 3.

AIR QUALITY CONTROL.

3-1. Purpose of Chapter.

(a) It is [hereby declared to be] the policy of the County to protect the County's ambient air [resources of the county to the degree] quality as necessary [for the] to:

(1) [Protection of] protect the [public] health, safety, comfort and well-being of [its citizens] the County's residents and businesses;

(2) [Prevention of] prevent injury to plant and animal life and to property; and

(3) [Protection of] protect the [comfort and convenience of the public and the protection of the] recreational resources of the [c]County.

(b) [In determining the ways and means to be required for reducing pollutant concentrations, matters of economics and private interests and other factors shall be subordinate considerations, in general, to the necessity of achieving the standards for the protection of the public health.] It is the County's goal to protect and facilitate the

improvement of the indoor air quality experienced by businesses and occupants of multi-tenant buildings.

(c) The **Department** must apply principles of sound environmental health management and use reasonably available air quality control technology to implement this Chapter.

3-2. Definitions.

[For the purposes of] In this [c]Chapter, the following words and phrases [shall] have the following meanings [respectively ascribed to them by this section]:

Air pollutant: Any substance [the emission of which] whose release into the atmosphere causes air pollution. [It] **An air pollutant** may be in the form of a smoke, gas, dust, **odor, particulate matter** or combinations of [these] smoke, gas, dust, odor, or particulate matter[, but is not limited to this enumeration].

Air pollution: The presence in the [outdoor] atmosphere of [one or more] any substances or combinations [thereof] of substances [such] whose character, [in such] quantities [and of such] or duration [as are or may tend] make those substances likely to [be injurious] pose a health hazard to humans, plants, or animals [life, or property], or [which] unreasonably interfere[s] with the [comfortable] use and enjoyment of [life or] property[, or with the conduct of business,]. The substances may be emitted as odors, solids, vapors, liquids, or gases from any single source or in combination with other sources.

Air pollution episode: A[n] recognized occurrence designated [recognized by a determination] by the [g]Governor of Maryland or the [s]Secretary of the state [department of health and mental hygiene] Department of the Environment [that the] as an accumulation of ambient air pollutants [may attain, is attaining or has attained a level or] at levels [considered injurious] harmful to human health.

Control equipment: Any [equipment which has the function of controlling the emissions from any process, fuel-burning or refuse-burning equipment and thus

reduces the creation of or the emission of or the emission of air pollutants into the atmosphere] device or equipment that prevents or reduces emissions.

Department: The [d]Department of [e]Environmental [p]Protection.

Director: The **Director** of the **Department** of Environmental Protection or [his designated agent] the Director's designee.

Emission: Any substance, other than water in an uncombined form, discharged [directly or indirectly] into the atmosphere, including [but not limited to] **odors, particulate matter**, vapors,[or] gases, or any combination [thereof and odors associated with them by means of stationary sources, equipment, materials handling, construction and other acts or processes] of these substances.

Excessive lodging: A condition of farmland where embedding of the previous crop causes the normal use of harvesting, tillage, or planting equipment to be impossible or impracticable.

[Fuel-burning equipment: Any equipment, device or contrivance and all appurtenances thereto, including ducts, breeching, fuel-feeding equipment, ash removal equipment, combustion controls, stacks and chimneys, used in the process of burning fuel or other combustible materials for the primary purpose of producing heat or power by indirect heat transfer.]

Incinerator: Any equipment [,] or device [or contrivance] used [for the destruction of] to destroy garbage, rubbish or other wastes by burning [and all appurtenances thereof].

[Indirect sources of pollution: The category of sources of pollution, also described under state and federal laws and regulations as "complex sources," which includes any facility, building, structure, highway, institution or combination thereof, the construction, modification or use of which results or may result in the emission from mobile source activities associated with it of air pollutants for which there is a national standard.]

Indoor air pollutant: Any substance whose indoor presence causes **indoor air pollution**. An **indoor air pollutant** may consist of particles such as dust, fibers, asbestos, radon progeny, or animal dander; gases such as formaldehyde, carbon monoxide, mists, or bioaerosols; biological substances such as viruses, bacteria, fungi or molds; [[and complex mixtures of particles, gases, and biological]] or combination of substances.

Indoor air pollution: The indoor presence of any airborne substance, such as particles, fumes, mists, gases, tobacco smoke, or vapors or combination of substances [[whose character, quantities or duration make those substances]] likely to pose a health hazard to humans, plants, or animals or unreasonably interfere with the use and enjoyment of residential or non-residential property, including the ordinary conduct of business.

Installation: Any article, machine, or equipment[, or other contrivance], including [but not limited to] **emission control equipment**, processing equipment, manufacturing equipment, fuel burning equipment, incinerators or any equipment or construction capable of generating, causing or reducing **emissions**.

[**Nuisance:** Environmental condition, intermittent or continuous, produced or correctable by human agency, prejudicial to reasonable enjoyment of health, comfort or safety of any individual or causing injury to damage to persons, property or the conduct of business.]

Odor: The property of an **emission** that stimulates a **person's** sense of smell.

Official fire: A fire authorized by a government officer for the purposes listed in this Chapter.

Opacity: [The state of a substance which renders it partially or wholly impervious to rays of light so that the substance partially or wholly obscures an observer's view.] The degree to which **emissions** reduce the transmission of light and obscure the view of an object in the background.

Open fire: A fire in which any material is burned in the open or in a receptacle other than a furnace, incinerator or other equipment [connected to a stack, which equipment is constructed in accordance with and meets the] not in conformance with the design requirements of the applicable building code of the [c]County [and] or the air quality control regulations of the state.

Particulate matter: Material other than water in uncombined form which is or has been airborne and exists as a liquid or solid at standard conditions of temperature [70EF] 25 degrees Celsius (77 degrees Fahrenheit) and pressure of [(] 29.92 inches (760 mm) [Hg)] mercury.

Permit: An air pollution control permit issued by the **Department** or the [state department of health and mental hygiene] Maryland Department of the Environment covering open burning, [and certain] **installation** [and equipment and other sources which may cause emissions], or operation of equipment with the potential to emit air pollution.

Person: An[y] individual, group of individuals, partnership, firm, voluntary association, public or private corporation, or an [association, governmental] agency [or any other legal entity], or department of the County or of any federal, state, or municipal government to the extent allowed under federal, state, or municipal law.

Plan for compliance: A schedule of actions designed to achieve compliance with this [c]Chapter after a specified period of time submitted by a violator and approved by the [d]**Director**.

[Ringlemann chart: A chart for grading the appearance, density or shade of smoke as published with instructions for use by the United States Bureau of Mines, in Information Circular 7718, dated August 1955. Any other method for grading smoke which is approved by the state department of health and mental hygiene as the equivalent of the Ringlemann Chart may be substituted therefor.]

133 **[Smoke:** Small gas-borne particles, other than water, in sufficient number to
134 be observable by sight.]

135 **Source:** [Any physical arrangement or structure which may emit or cause to be
136 emitted air pollutants. It includes, but is not limited to, stacks, chimneys, building
137 openings, open fires, vehicles, processes, equipment, structures and premises.] A
138 **person** or property that is contributing to **air pollution**.

139 **Unconfined source:** **An installation** that causes **emissions** that are not
140 **enclosed in a stack, duct, hood, flue, or other conduit, but that escape into the**
141 **atmosphere through openings such as windows, vents, or doors, ill fitting closures, or**
142 **poorly maintained equipment.**

143 **3-3. Administration.**

144 [It shall be the duty of the director of the department of environmental
145 protection to:]

146 [(a) Supervise the execution of all laws, rules and regulations pertaining to
147 air pollution as provided in this chapter;]

148 [(b) Conduct studies, investigations and research relating to air pollution and
149 its prevention, abatement and control;]

150 [(c) Issue such orders as may be necessary to effectuate the purposes of this
151 chapter and enforce the same by all appropriate administrative and
152 judicial proceedings;]

153 [(d) Make inspections and tests of existing and newly installed equipment
154 subject to this chapter to determine whether such equipment complies
155 with the standards set forth in the regulations adopted pursuant to this
156 Code;]

157 [(e) Investigate complaints of violations of the provisions of this chapter,
158 make inspections and observations of air pollution conditions and

- 159 maintain records of all such investigations, complaints, inspections and
 160 observations;]
- 161 [(f) Approve or reject applications for permits, plans of compliance and
 162 other documents required under provisions of this Code;]
- 163 [(g) Secure necessary scientific, technical, administrative and operational
 164 services, including laboratory facilities, by contract or otherwise;]
- 165 [(h) Prepare and develop a comprehensive plan or plans in the county for the
 166 prevention, abatement and control of air pollution;]
- 167 [(i) Advise, consult and cooperate with other local governmental units,
 168 agencies of the state, industries, interstate or interlocal agencies and the
 169 federal government and with interested persons and groups;]
- 170 [(j) Collect and disseminate information and conduct educational and
 171 training programs relating to air pollution;]
- 172 [(k) Encourage voluntary cooperation by persons or affected groups to
 173 achieve the purpose of this chapter;]
- 174 [(l) Receive and administer grants or other funds or gifts from public and
 175 private agencies, including the state and federal governments, for the
 176 purpose of carrying out any of the functions of this chapter;]
- 177 [(m) Do any and all acts which may be necessary for the successful
 178 prosecution of the policy of this chapter and such other acts as may be
 179 specifically enumerated herein;]
- 180 [(n) Promulgate rules and regulations subject to provisions in section 3-4
 181 under which this law will be administered.]
- 182 (a) The **Director** must enforce this Chapter. The **Director** must advise,
 183 consult and cooperate with other local government units, state agencies,
 184 interstate agencies, the federal government, private industries and

businesses, homeowners associations, and other interested **persons**
about air quality problems that affect human health.

(b) This Chapter does not waive any requirement under state or federal law.

3-4. Regulations.

[(a)] The [c]**County** [e]Executive may adopt regulations under method (2) [of section 2A-15 of this Code, for] to implement this [c]Chapter. [Such] [r]Regulations [shall] adopted under this Chapter must not conflict with, [nor] waive any provisions of [this Code nor], or be less restrictive than [regulations currently established and in effect as] any requirement[s] [of the state department of health and mental hygiene] of state or federal law.

[(b)] Regulations adopted pursuant to provisions of this section shall provide for but not be limited to the following:

- (1) Control of particulate matter emissions from fuel burning installations, grain drying installations, materials handling and construction and other acts and installations;
- (2) Control of gas, vapor, odor and volatile organic compound emissions from fuel burning and other installations;
- (3) Prohibition of certain incinerators and new fuel-burning installations;
- (4) Application fees at a rate not to exceed the cost of administering the program.]

[(c)] Notwithstanding any other provisions of this section, the county executive may adopt regulations, under method (2) of section 2A-15 of this Code, regarding procedures for the issuance of permits for indirect sources of pollution in accordance with applicable state and federal regulations.]

3-5. [Visible] Ambient air quality requirements for visible emissions.

- (a) **Generally.** [No person shall] A **person** must not cause [, suffer, allow] or **permit** the discharge of any visible **emission**[s] from any **installation** or building, other than water in an uncombined form, into the atmosphere [which are visible to human observers].
- (b) **Exceptions.** [(1)] Subsection (a) [shall] does not apply to any: [emissions during the building of a new fire, cleaning of fires, soot blowing, start-up, any process modification or adjustment or occasional cleaning of control equipment, the shade or appearance of which is not darker than No. 1 on the Ringelmann Smoke Chart or of such opacity as to obscure an observer's view to a degree not greater than does smoke designated as No. 1 on the Ringelmann Smoke Chart, for a period or periods aggregating no more than four (4) minutes in any sixty (60) minutes.]
- [(2) Subsection (a) shall not apply to emissions of the following:
- a. From those incinerators that are to be phased out under provisions of this chapter;]
- (1) **Emission** during start-up and process modifications or adjustments, or occasional cleaning of **control equipment**, which is not greater than 40 percent **opacity** for a period of not more than 6 consecutive minutes in any 60-minute period.
- (2) **Emission** from a food preparation **installation**, such as a char-broiler or pit barbeque, which operates at one location less than 15 days in any 365-day period, or which is not greater than 10 percent **opacity**.
- (3) [b. From the burning of wood in fireplaces or used as residential] **Emission** caused by wood burning in a residential fireplace or wood stove, or **emission** for recreational purposes such as a campfire.

(4) [c.] **Emission** [F]from an **open fire**[s] (except a salamander[s])
permitted under [provisions of] this [c]Chapter.

[3-6. Control and prohibition of open fires.]

[(a) **Official fires.** Open fires may be set with due notice to, but without
prior approval from the department in performance of an official duty of
any public officer if the fire is necessary for one or more of the
following reasons or purposes:

(1) For the prevention of a fire hazard which cannot be abated by
other means.

(2) Except during the existence of an air pollution episode, for the
instruction of public fire fighters or industrial employees under
supervision of the director, department of fire and rescue
services.

(3) For the protection of the public health, safety or welfare.]

[(b) **Open fires.** Except during the existence of an air pollution episode, the
following open fires are allowed within the county without prior
approval from the department; provided, that they otherwise conform
with other fire control laws and regulations; and provided, that no
nuisance is created:

(1) **Leaves.** In those areas where no provision is made for public
collection of leaves, the open burning of leaves originating on the
premises by householders is permitted.

(2) **Household Trash.** In those areas where no provision is made for
public collection of refuse, burning of ordinary household trash
(Incinerator Institute of America waste types 0 and 1 only)
originating on the premises, excluding commercial
establishments, by householders is permitted; provided, that:

- 266 a. The fires are located no closer than three hundred (300)
267 feet from any neighboring habitable dwelling or place
268 where people work or congregate;
- 269 b. Materials are not burned which create dense smoke (emissions of
270 an opacity or darkness greater than No. 1 on the Ringelmann
271 Smoke Chart.)
- 272 (3) **Cooking.** Fires may be used for the cooking of food; provided,
273 that visible emissions are not greater than No. 1 on the
274 Ringelmann Smoke Chart and no nuisance is created.
- 275 (4) **Salamanders.** Salamanders or other devices fired with propane
276 gas or No. 2 fuel oil may be used for heating by construction or
277 other workers; provided, that no visible emissions are created.
- 278 (5) **Agricultural Operations.** Fires may be set in the course of
279 agricultural operations; provided, that visible emissions are not
280 greater than No. 1 on the Ringelmann Smoke Chart and no
281 nuisance is created and prior notice is given to the department.
- 282 (6) **Recreational Purposes.** Open fires may be set for recreational
283 purposes such as campfires; provided, that visible emissions are
284 not greater than No. 1 on the Ringelmann Smoke Chart and no
285 nuisance is created.
- 286 (7) **Explosive Containers.** Empty boxes and fiber packing materials
287 which have previously contained high explosives may be burned
288 at an isolated location more than one hundred (100) feet from any
289 occupied building or structure or public street or road and no
290 person shall be closer than one hundred (100) feet of the fire once
291 burning has begun.]

292 [(c) **Outside of buildings.** Except as provided by paragraphs (a) and (b) of
 293 this section, no person shall in the county burn any refuse or plant life,
 294 in any public or private place outside of any building unless he shall
 295 have first obtained a permit from the department for such activity. The
 296 duration of such permits shall be established by the director. The
 297 department shall issue such permits only when:

- 298 (1) There is no practical alternate method to dispose of the material
 299 to be burned or to conduct the desired activity.
- 300 (2) No hazardous condition or nuisance will be created.
- 301 (3) No burning will be done within five hundred (500) yards of one
 302 (1) or more occupied buildings or a heavily traveled public
 303 roadway.
- 304 (4) Fire control laws or regulations of other governmental agencies
 305 will not be violated.
- 306 (5) No materials which provide smoke, in excess of No. 1 on the
 307 Ringelmann Smoke Chart, when burned, including but not
 308 limited to tires and roofing material, will be burned.
- 309 (6) Such other conditions as the director may impose to minimize
 310 creation of smoke, to prevent nuisances and air pollution and to
 311 protect the health, safety, comfort and property of any persons
 312 shall be satisfied.
- 313 (7) The material to be burned shall be waste matter of the premises
 314 on which it is to be burned.
- 315 (8) Methods of disposal by burning acceptable to the director may be
 316 approved for use when distance limitations cannot be met.]

317 [(d) **Extinguishing fires in violation.** Fires started in violation of this
 318 section shall be promptly extinguished by the person responsible for the

same upon notice by a duly authorized agent of the department. This shall not be considered an exclusive remedy.]

3-6. Ambient air quality requirements for particulate matter from unconfined sources.

A person must not cause or [[permit]] allow emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne. When the Director orders, these precautions must include installing and using hoods, fans, and dust collectors to enclose, capture, and vent emissions.

[3-7. Permits for certain equipment.]

[(a) **Required generally.** Subject to provisions found in section 3-9 of this chapter, it shall be unlawful within the county for any person to either build, erect, alter, replace, store, operate, sell, rent or use any source, article, machines, equipment, substance or other contrivance which is the subject of regulations promulgated in accordance with section 3-4(a) of this chapter or by the Maryland State Department of Health and Mental Hygiene, the use of which may directly or indirectly cause emissions into the air, without having first obtained the appropriate Montgomery County air pollution control permit to do so. This requirement shall be deemed satisfied when any one of the following is in effect:

- (1) A currently valid permit to construct or operate has been issued by the state department of health and mental hygiene for the subject installation or equipment.
- (2) A currently valid conditional permit has been issued by the state department of health and mental hygiene for the subject installation or equipment.]

345 [(b) **Exemptions.** No permit shall be required for installation of equipment
 346 specifically exempted under regulations issued by the state department
 347 of health and mental hygiene for the subject installation or equipment.]

348 [(c) **Compliance with regulations.** The mere existence of a valid permit
 349 does not relieve a person of his duty to comply with any conditions
 350 contained in such permit and other county, state and federal air pollution
 351 control or fire control regulations.]

352 [(d) **Change of ownership.** A change of ownership shall terminate all
 353 permits issued for a particular installation or equipment. The new owner
 354 shall make application for the appropriate permit within thirty (30) days
 355 of the change of ownership.]

356 **3-7. Ambient air quality requirements for particulate matter from**
 357 **materials handling and construction**

358 (a) A person must not cause or permit any material to be handled, transported,
 359 or stored, or any building or road to be constructed, altered, repaired, or
 360 demolished, without taking reasonable precautions to prevent particulate
 361 matter from becoming airborne.

362 (b) Unless the Director finds otherwise in a particular situation, reasonable
 363 precautions include:

364 (1) Using water or chemicals to control dust when demolishing a
 365 building or structure, undertaking construction operations, grading a
 366 road, or clearing land;

367 (2) Applying asphalt, water, or suitable chemicals on a dirt road,
 368 materials stockpile, or other surface that can create airborne dust;

369 (3) Installing and using hoods, fans, and dust collectors to enclose and
 370 vent the handling of dusty materials, and employing reasonable

containment methods to prevent the release of **particulate matter** during sandblasting or similar operations;

(4) Covering each open-bodied vehicle used to transport any material likely to create **air pollution** at all times when the vehicle is moving;

(5) Paving a roadway and maintaining it in clean condition; and

(6) Promptly removing earth or other dust-producing material from any paved street that was transported there by truck, earth moving equipment, or water erosion.

[3-8. Applications for permits.]

[(a) **Generally.** Applications for the air pollution control permits described in section 3-7 shall be made to the department on forms provided by the department. The department shall require such information and details regarding the installation as it considers necessary to determine whether the installation to operate is in compliance with county, state and federal air pollution control regulations and that the installation incorporates advances in the technology of air pollution control developed for the kind and amount of emissions of the applicant's installation.]

[(b) **Denial of application.** Whenever it shall appear to the department that the operation or construction of an installation for which a permit is applied will result in a violation of any county, state or federal air pollution control regulations or contravention of applicable ambient air quality standards, an order shall be entered denying the permit and setting forth the reasons thereof. The department shall not accept a further application unless the applicant has complied with the objections specified by the department as its reasons for denial of the permit or submitted satisfactory evidence demonstrating that a particular

requirement cannot be met immediately and submitted to the department an acceptable plan of compliance.]

3-8. Control and prohibition of open fires.

(a) **Official fires.** A public officer may set an **open fire** with due notice to, but without prior approval from, the **Director** if the public officer is performing an official duty and the fire is necessary to:

- (1) prevent a fire hazard which cannot be abated by other means;
- (2) instruct public fire fighters or industrial employees under supervision of the Fire Administrator if the instruction does not occur during an **air pollution episode** and the fires do not contain asphaltic or asbestos materials; or
- (3) protect the public health, safety or welfare.

(b) **Open fires.** Except during an **air pollution episode**, the following **open fires** are allowed without prior approval of the **Director** if the fire does not otherwise violate any other fire control law or regulation:

- (1) **Cooking.** A **person** may use a fire to cook food if the **person** uses an outdoor cooking apparatus approved for use by a nationally recognized standards organization, such as Underwriters Laboratory, and the **person** does not create a nuisance.
- (2) **Salamanders.** Construction workers and other outdoor workers may use a salamander or other device fired with propane gas or No. 2 fuel oil for heating if the device does not create visible **emissions.**
- (3) **Recreational purposes.** A **person** may set an **open fire**, such as a campfire, for recreational purposes if visible **emissions** do not exceed 20 percent **opacity** for more than 3 minutes total in any

consecutive 60 minute period. The fire must not be larger than 3 feet in diameter.

(c) **Permitted fires.** Except as provided in subsections (a) and (b), a person must not burn any refuse or plant life outside of a building unless the person has obtained a permit from the Director. The Director must limit the duration of the permit. The Director may issue the permit for any of the following reasons or purposes:

(1) **Agricultural open burning.** A person may set a fire during agricultural operations if the fire complies with subsection (d) and the person obtains an agricultural burning permit before setting the fire. The Department may grant a permit to burn excessive lodging or destroy diseased crops and other vegetation originating on the applicant's property only:

(A) on a property that is agriculturally assessed for property tax purposes; and

(B) if the burning is necessary to maintain agricultural land in production.

(2) **Ceremonial burning.** A person may set fires for a ceremonial purpose.

(3) **Disaster rubbish.** A person may burn rubbish, including landscape waste, during a community disaster if the County Executive has officially declared a state of emergency.

(4) **No alternative.** A person may burn any material if the Director finds that there is no practical alternative way to dispose of or store the material [[or conduct the desired activity]] more safely.

(d) **Conditions.** The Director may impose any condition on an open burning permit to prevent air pollution or protect the health, safety,

comfort and property of **persons**. An **open fire** must at all times be attended by a permittee or the permittee's agent. The permittee or the permittee's agent must have the burning **permit** in possession during the burning. The **Director** must not grant a **permit** if the intended activity would:

- (1) Create a hazardous condition;
- (2) Be conducted during an **air pollution episode** or other burning prohibition period declared by the Governor or the Secretary of the Department of the Environment;
- (3) Be conducted within 500 yards of any occupied building or a heavily traveled public road, walkway, path, or other facility used by the public;
- (4) Violate any fire control law or regulation enforced by another government agency;
- (5) Create visible **emissions** whose **opacity** exceeds 20 percent for more than a total of 3 minutes in any consecutive 60-minute period; or
- (6) Include the burning of leaves, brush, other vegetation, or household trash.

(e) **Permit denial.** The **Director** may deny a request for an open burning **permit** if:

- (1) the applicant has not shown that the applicant can comply with this Chapter and any applicable state or federal **air pollution** control law; or
- (2) the **Director** finds, based on the applicant's history, that the applicant is not likely to comply with all applicable requirements of **County**, state, or federal **air pollution** control laws.

(f) **Permit revocation or suspension.** The **Director** may revoke, suspend, or modify a **permit** granted under this Section if the **Director** finds that the permittee has violated any term or condition of the **permit**. Notice of any proposed revocation, suspension, or modification must be in writing, include the reason for the decision, and give the permittee an opportunity for a hearing under Section 3-14. A request for a hearing does not stay the **Director's** action.

(g) **Extinguishing fires in violation.** A **person** responsible for starting a fire in violation of this Section must promptly extinguish the fire after receiving notice from the **Department**. The notice to extinguish the fire is not an exclusive remedy.

[3-9. Plan of compliance.]

[When an applicant has adequately demonstrated to the department that compliance with this chapter and regulations adopted thereto cannot be effectively and immediately made, the director shall have authority to grant permits for the installation or operation of noncomplying equipment, but only in the event that all necessary steps have been taken to secure compliance with this chapter. Such steps shall include the requirement that the applicant file with the department a plan of compliance which shall include a schedule of actions approved by the director for the control of emissions. Permission for noncompliance shall be granted for a period of no longer than two (2) years, during which time the applicant shall file periodic progress reports as specified by the department. At the end of the period granted, the applicant shall be deemed in violation of this chapter, unless this period is further extended by the board of appeals upon proper showing of an attempt to comply and its approval of a plan of compliance.]

3-9. Ambient air quality requirements for odors.

- (a) A person must not cause or permit the emission into the atmosphere of any gas, vapor, or particulate matter beyond the person's property line or [leasehold] unit if a resulting odor creates air pollution.
- (b) The Director may issue a citation for violating subsection (a) if the Director:
- (1) [[W]]witnesses the violation; or
 - (2) [[Receives complaints from at least three individuals who have personal knowledge of an air pollution odor]] [[otherwise has reasonable cause to believe that a violation occurred]] receives complaints from at least two individuals who have personal knowledge of an air pollution odor.

3-10. Abatement orders.]

- [(a) Upon finding that a person is violating a provision of this chapter, the director or an authorized fire official may, at his discretion, issue an order directing such person to cease such violation. Such order shall be in writing and shall be served upon the person to whom it is directed, either by mail or by personal delivery. If such person cannot be located within the county after reasonable effort, service shall be made by certified mail at his last known address or by posting the order upon the premises. Nothing in this section shall be construed to prohibit the director or the fire marshal from dispensing with the provisions of this section and proceeding directly under sections 3-11 and 3-17 of this Code.]
- [(b) When the director determines, either upon his own investigation or upon petition of those affected, that a nuisance as defined by this chapter exists and effects at least thirty (30) percent of a sample of people

exposed to it in their usual places of occupancy, the sample size to be at least twenty (20) people or seventy-five (75) percent of those exposed if fewer than twenty (20) people are exposed, he shall immediately issue an abatement order to the person responsible for the condition in accordance with subsection (a) herein.]

3-10. Control and prohibition of indoor air pollution.

(a) A person must not cause or [[permit]] allow the emission of indoor air pollutants beyond the person's property line [[or leasehold]] in a manner that creates indoor air pollution [[in an adjacent or connected property or leasehold]].

(b) Subsection (a) does not apply to [[odors created by any routine]]:

(1) the residential [[living activity such as cooking,]] use of personal hygiene products [[,]]; or [[smoking in non-restricted areas]]

(2) residential cooking odors [[in multi-family dwellings]].

(c) In this Section, "property line" means the boundary of a residential or non-residential area that a person legally uses or owns. For a property divided into more than one legal unit, such as multi-family housing or a multi-tenant commercial property, "property line" also includes a boundary between a unit and a common area or between units.

3-11. Revocation of permit.]

[The department shall issue an order suspending or revoking any permit for violations of this chapter and regulations adopted pursuant thereto, state or any federal air pollution control laws or regulations, state or county fire control laws or an approved plan of compliance. The department shall revoke any permit for violations or for any false statement in the application or because of conditions revealed by such application or any report, record or inspection or any other means which would warrant refusal of a permit on any original application. An order suspending or

revoking a permit shall be served in person or by certified mail upon the permit holder and shall be final unless the holder appeals such order as provided in section 3-16.]

3-11. Determining compliance.

(a) **Compliance methods.** The **Director** may conduct testing or require a property owner to conduct testing to determine compliance with this Chapter in response to a complaint.

(b) **Manner of testing.** A property owner must conduct all tests in a manner, and before the deadline, set by the **Director** and submit a detailed report of all test results to the **Director** within 15 days after the testing is complete unless the **Director** grants an extension. Each test must be performed by a **person** qualified to conduct the test, as determined by the **Director**.

3-12. Testing and monitoring.]

[(a) **Methods.** Emission tests shall be conducted in accordance with recognized standards and methods of measurement. Methods found in the American Society of Mechanical Engineering (ASME) Power Test Code 27-1957, American Society for Testing Materials (ASTM) D2928-70 and the specifications of the U.S. Environmental Protection Agency shall be used, but these may be modified or adjusted by the department to suit specific sampling conditions or needs based upon good practice, judgment and experience. Measurements taken in stacks at point beyond the installed control equipment shall be deemed to be a measurement of emission.]

[(b) **Manner.** The department is hereby authorized to conduct or cause to be conducted any test or tests to determine compliance with this chapter or regulations adopted thereto. All tests shall be conducted in a manner

determined by the director and a complete, detailed test report of such test or tests shall be submitted to him in timely fashion. When tests are taken by the owner or the owner's independent testers, the director shall require that such tests be conducted by reputable, qualified personnel, as determined by the director or representatives of the department.]

[(c) **Facilities and access.** It shall be the responsibility of the owner or operator of the equipment tested to provide, at the owner's expense, utilities, facilities and reasonable and necessary openings in the system or stack and safe and easy access thereto, to permit samples and measurements to be taken. All new sources of air pollutants created after the effective date of this law may be required by the director to provide utilities, facilities and adequate openings in the system or stack, and safe and easy access thereto, to permit measurements and samples to be taken.]

[(d) **Cost.** If emission tests conducted as the result of the action of the director substantiate that a violation exists, the person or persons responsible for the violation shall be responsible for paying all attendant costs for conducting such tests. If such tests do not show that a violation exists, then the county shall be responsible for paying all costs for conducting such tests. In no event shall the county assume costs of providing facilities, utilities and access for such testing. The cost of emission tests required by the director on newly installed equipment for the issuance of the initial permit to install and operate shall be the owner's regardless of the results. When the person responsible elects to conduct his own tests, then the person so electing shall pay for the test or tests notwithstanding other provisions of this section and irrespective of the result.]

611 [(e) **Data.** Emission data secured as the result of this regulation or other
 612 provisions of law shall be correlated with applicable emission
 613 limitations or other control measures and shall be available for public
 614 inspection during regular business hours or by appointment during other
 615 hours at the offices of the department. Information other than emission
 616 data which relates to production, sales figures or processes of any owner
 617 or operator shall not be disclosed publicly upon finding by the director
 618 that to do so will result in a significant and adverse effect upon the
 619 competitive position of such owner or operator, except in or following
 620 public hearing or except as necessary to protect the public health, safety
 621 or well-being, unless such owner or operator shall expressly agree to
 622 their publication or availability to the general public.]

623 **3-12. Emergency provisions.**

624 (a) Notwithstanding this Chapter or any other law, if the **Director** finds
 625 that a **person** is causing or contributing to **air pollution** and that the
 626 pollution creates an emergency [[which]] that requires immediate
 627 action to protect the public health or safety, the **Director** must order
 628 the **person** to immediately reduce or stop the **air pollution**. That
 629 **person** must immediately comply with the **Director**'s order.

630 (b) If the Governor or the Secretary of the Department of the Environment
 631 declares an **air pollution episode**, the **Director** may take any action
 632 authorized under state law to protect the public health or safety.

633 **3-13. Circumvention and right of entry.]**

634 [(a) No person shall build, erect, install or use any article, machine,
 635 equipment or other contrivance, the sole purpose of which is to dilute or
 636 conceal an emission without resulting in a reduction in the total
 637 emission of air pollutants nor shall a person do any noncorrective thing

638 nor commit any noncorrective act with the intent to distort test emission
639 results.]

640 [(b) Any person who in any manner hinders, obstructs, delays, resists,
641 prevents or in any manner interferes or attempts to interfere with the
642 department or its representatives in the performance of any duty or shall
643 refuse to permit the department or its representative to perform their
644 duty by refusing them entrance at reasonable hours to any premises in
645 which the provisions of the chapter are being violated or are suspected
646 by the director of being violated or refuse to permit testing or permit the
647 inspection or examination of such premises for the purpose of
648 enforcement of the provisions of this chapter and regulations adopted
649 thereto shall be subject to revocation by the director of all permits
650 issued pursuant to this chapter to him and such other action as may be
651 provided at law or by provisions of this Code.]

652 [(c) (1) For the purpose of developing or assisting in the development of
653 any implementation plan, standard of performance, emission
654 standard or the enforcement of any regulation contained herein,
655 each supplier of residual and distillate fuel oil in the county is
656 hereby required to file an annual report with the director, which
657 report is due on July 1 of each year, listing all customers of that
658 supplier and showing therewith the fuel types, grades and
659 quantities purchased or consumed by each customer thereof
660 during the twelve (12) months immediately preceding.

661 (2) The director is hereby authorized to waive the requirements of
662 the foregoing subsection as to any supplier or suppliers upon
663 written agreement by that supplier that it will, within ten (10)
664 days of receipt of a written request by the director, furnish such

information as set forth in the preceding section as he deems necessary. All information obtained under this or the preceding section shall be entitled to protection as trade secrets and the department shall keep such information confidential.]

3-13. Enforcement and Penalties.

- (a) The **Director** may enter a non-residential site during normal business hours or at any other reasonable time to inspect, investigate, or monitor activities subject to this Chapter. If the **person** in charge of the site does not consent to an entry by the **Director**, the **Director** must obtain an administrative search warrant from a court with jurisdiction by showing that reasonable legislative or administrative standards for conducting an inspection have been satisfied.
- (b) The **Director** may, with the consent of the owner or occupant, enter a private dwelling at any reasonable time to inspect, investigate, or monitor activities subject to this Chapter. If the owner or occupant of the residence does not consent to an entry by the **Director**, the **Director** may obtain an administrative search warrant from a court [[with jurisdiction]] by showing that reasonable legislative or administrative standards for conducting an area inspection have been satisfied.
- (c) A **person** must not hinder, prevent, or unreasonably refuse to permit a lawful inspection, investigation, or monitoring under this Chapter.
- (d) [[Upon finding a violation of this Chapter, the]] The **Director**, the Fire Administrator, or the Administrator's designee may issue a notice of violation, corrective order, stop-work order, or civil citation to any **person** [[causing or permitting the violation]] who causes or allows a violation of this Chapter.

(e) A **person** ~~[[that]]~~ who causes or ~~[[permits]]~~ allows a violation of this Chapter must submit a **plan for compliance** if required under a notice of violation or corrective order. The **plan** ~~[[of]]~~ **for compliance** must include a schedule to correct the violation. The **Director** must approve any **plan** ~~[[of]]~~ **for compliance** and any ~~[[later]]~~ amendment to an approved plan.

(f) The **Director** may issue a stop-work order to any **person** ~~[[that]]~~ who violates this Chapter ~~[[when performing any]]~~ in connection with an activity ~~[[authorized by]]~~ conducted under a building **permit** issued under Chapter 8 or a sediment control **permit** issued under Chapter 19.

(g) Any violation of this Chapter is a Class A violation. Each day a violation continues is a separate offense.

(h) In addition to any other remedy allowed by law, the **Department** may seek injunctive or other appropriate judicial relief to prevent or stop a violation of this Chapter.

[3-14. Emergency provisions.]

[(a) Notwithstanding the provisions of this chapter or any other provision of law, if the director finds that any person is causing or contributing to air pollution and that such pollution creates an emergency which requires immediate action to protect the public health or safety, he shall order such person to reduce or discontinue immediately the air pollution and such order shall be complied with immediately.]

[(b) Whenever an air pollution episode is declared by the secretary of the state department of health and mental hygiene or the governor, the director shall have the authority to take such action as prescribed under state regulations governing the control of air pollution or as necessary to protect the public health or safety.]

3-14. Appeals.

[[a) Any]] A person aggrieved by an action taken or an order issued under this Chapter may seek reconsideration [[within 10 days after the date of the action or order. A request for reconsideration must be filed in writing with the **Director**, and must specify the date and nature of the action or order, the remedy requested, and the basis for the remedy. If the Director finds that material facts are disputed, the Director may refer the matter to a hearing officer]] and appeal the action or order under the procedures in Article I of Chapter 2A. [[If the Director finds that no material facts are disputed, the Director must make a final decision on the request for reconsideration in writing within 10 days after receiving the request. An aggrieved person may appeal the Director's final decision within 30 days after the **Director** issues the decision, as provided in Section 2A-11.]] [[b)] A request for [[a]] reconsideration does not stay the [[**Director's**]] action or order unless the **Director** or other decision maker grants a stay.

3-15. Prima facie evidence of unlawful emissions.]

[In any hearing of the district court for the county or any court of competent jurisdiction, the fact of operation without a valid permit, together with testimony as to ownership or responsibility from the records of the department shall be prima facie evidence of unlawful emissions and that the equipment for which the permit is not in effect is being operated in violation of the provisions of this chapter and regulations enacted pursuant thereto.]

3-15. Judicial review.]]

[[A person aggrieved by a final decision of the **Director** may appeal the decision to the Circuit Court for Montgomery **County** under the provisions of the Maryland Rules governing judicial review of administrative decisions. Any party to the Circuit Court proceeding may appeal from the Circuit Court decision to the

appellate courts of Maryland under the applicable provisions of the Maryland Rules.]]

[3-16. Appeals.]

[Any person aggrieved by an order issued under this Chapter may appeal within 10 days from such order to the County Board of Appeals under Section 2-112(a). Such appeal does not stay execution of the order more than 10 days, unless the Board of Appeals grants a stay upon application of the person filing the appeal.]

[3-17. Violations, penalties and liabilities.]

[Failure to comply with any provision of this chapter shall constitute a class A violation as set forth in section 1-19 of chapter 1 of the County Code.]

Sec. 2. Transition.

Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect.

Approved:

Blair G. Ewing, President, County Council

Date

Approved:

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

Date